ORIGINAL

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter of	)	
	)	**CC Docket No. 95-116**
Telephone Number Portability	)	**RM 8535**
	)	

SUPPLEMENTAL REPLY COMMENTS OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA"), by its attorneys and pursuant to Public Notice, DA 96-358 ("Notice"), hereby replies to the supplemental submissions of other commenters[1] filed in response to the Commission's request for further public comment addressing the impact of the Telecommunications Act of 1996 ("the '96 Act")[2] on the issues

[1] AT&T Corp. ("AT&T"), MCI Telecommunications Company and MCImetro ("MCI"), Sprint Corporation ("Sprint"), Ameritech, Bell Atlantic, BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth"), GTE Service Corporation ("GTE"), NYNEX Telephone Companies ("NYNEX"), Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"), Pacific Bell, SBC Communications, Inc. ("SBC"), United States Telephone Association ("USTA"), Association for Local Telecommunications Services ("ALTS"), MFS Communications Company, Inc. ("MFS"), Omnipoint Corporation ("Omnipoint"), Teleport Communications Group, Inc. ("TCG"), California Cable Television Association ("CCTA"), Cox Enterprises, Inc. ("Cox"), National Cable Television Association, Inc. ("NCTA"), Time Warner Communications Holdings, Inc. (Time Warner"), Airtouch Paging and Arch Communications Group ("Arch"), Bell Atlantic NYNEX Mobile, Inc. ("BAMS"), Multimedia Communications, Inc. ("Multimedia"), Personal Communications Industry Association ("PCIA"), National Association of Regulatory Utility Commissioners ("NARUC"), New York State Department of Public Service ("NYDPS"), Interactive Services Association ("ISA"), and National Emergency Number Ass'n ("NENA").

[2] Pub. L. No. 104-104, 110 Stat. 56, § 253 (1996).

raised in the Notice of Proposed Rulemaking ("NPRM") initiating the captioned rulemaking proceeding.[3]

I.

Introduction

In its supplemental comments, TRA, an organization consisting of more than 450 carriers engaged in the resale of interexchange, international, local exchange, wireless and other services and their underlying service and product suppliers, expressed the view that the '96 Act confirmed the authority, and indeed, the obligation, of the Commission to mandate and ensure the prompt nationwide availability of local number portability. The '96 Act, TRA noted in its supplemental comments, recognized that service provider number portability is not only a precondition to the emergence, growth and development of local exchange/exchange access competition, but that in order to achieve the Act's pro-competitive aims, it must be implemented both promptly and ubiquitously. To this end, the '96 Act empowered the Commission to develop a uniform, national number portability regime and directed it to accomplish this important task within a highly confined time period. In its supplemental comments, TRA joined the prevailing industry consensus in advocating adoption of Location Number Routing ("LNR") as the preferred permanent local number portability solution, urging that implementation of LNR was technically feasible, could be accomplished expeditiously and on a competitively neutral basis and would not impair service quality, reliability or convenience.

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[3] Telephone Number Portability, Notice of Proposed Rulemaking, CC Docket No. 95-116, RM 8535, FCC 95-284 (released July 13, 1996).

All commenters generally acknowledged that the '96 Act mandated the implementation of local number portability and designated the Commission as the implementing agent. However, disputes arose over, among other things, the appropriate technical solution, the timing of implementation and the manner in which the associated costs should be recovered and from whom. TRA will address the latter two matters below.

II.

Argument

A. The '96 Act Anticipates Prompt and Ubiquitous Implementation of a Permanent Local Number Portability Solution

A number of the local exchange carrier ("LEC") commenters contend that the Commission need not and should not establish deadlines for implementation of a permanent number portability solution.[4] These commenters contend that the '96 Act recognized that interim measures are adequate to promote competition and that the timing of the deployment of a permanent solution in individual markets should be left to the States and generally required only when affirmatively requested by a competitor. TRA strongly disagrees.

First, the '96 Act reflects a clear Congressional intent that a permanent local number portability solution be adopted and deployed expeditiously. The only reference in the '96 Act to interim measures is in Section 271(c)(2)(B)(ix).[5] There, the '96 Act provides that "interim

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[4] *See, e.g.,* USTA Comments at 2-4; Bell Atlantic Comments at 3; GTE Comments at 7-9; BellSouth Comments at 5-6.

[5] 47 U.S.C. § 271(c)(2)(B)(ix).

telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements" will satisfy the "competitive checklist" local number portability requirement for Regional Bell Operating Company ("RBOC") provision of "in-region" interLATA services only "[u]ntil the date by which the Commission issues regulations pursuant to Section 251 to require number portability." "After that date," the '96 Act mandates, "full compliance with such regulations" will be necessary to allow for RBOC entry into the "in-region" interLATA market. And, of course, Section 251 requires the Commission to adopt regulations implementing the "duty" of all LECs to "provide, to the extent technically feasible, number portability"[6] within a mere six months following enactment of the Act. In other words, the '96 Act acknowledged remote call forwarding ("RCF") and direct inward dialing trunks ("DID") as less-than-optimal arrangements that have been or could be quickly implemented to speed competitive entry, but clearly anticipated that RCF and DID would quickly give way to a superior permanent solution selected by the Commission following the conduct of a notice and comment rulemaking proceeding.[7]

Certainly, the '96 Act did not contemplate that implementation of a permanent number portability solution must await State action or be dependent upon the receipt of a demand therefor by a competing provider of local exchange service. Section 251(b) is quite clear in imposing on all LECs the "duty to provide, to the extent technically feasible, number portability

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[6] 47 U.S.C. § 251(b)(3).

[7] TRA disagrees with the view espoused by various LEC commenters that the Commission need not evaluate or address the various interim number portability measures. These schemes will be in place for some period of time and could be manipulated to impede the introduction of local exchange/exchange access competition during that interim period. Commission scrutiny and oversight, therefore, is not only appropriate, but required.

in accordance with requirements prescribed by the Commission."[8] Except as specifically qualified therein and in Section 251(f)(2) (with respect to "rural telephone companies"),[9] this "duty" is absolute. Nowhere does the '96 Act condition an LEC's obligation to provide number portability on the actions competing providers or State mandates.

The record clearly establishes that LRN is technically feasible and expeditiously achievable and hence there is no basis for delay in implementing this architecture. As TRA and other commenters showed in their supplemental comments, LRN has been the preferred technical solution in all States in which local number portability has been addressed either in the regulatory arena or in industry forums.[10] And LRN can be promptly and flexibly deployed, given that all necessary software upgrades will be available by the second quarter of 1997. Moreover, the expeditious implementation of LRN is required to rectify the serious competitive, technical and other problems associated with RCF and DID. As described by AT&T, these interim arrangements "impair transmission quality, network reliability, and network maintenance functions of alternative carriers and deprive their customers of many 'vertical features.'"[11] And, as detailed by AT&T and MCI, they are subject to strategic price manipulation that could impede competitive entry and viability.[12]

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[8] Id.

[9] 47 U.S.C. § 251(f)(2).

[10] *See, e.g.,* TRA Comments at 4; AT&T Comments at 2-3 ; MCI Comments at 6-7.

[11] AT&T Comments at 9; *see also* MCI Comments at 5-6

[12] MCI Comments at 7; AT&T Comments at 9-10.

The Commission should provide strong aggressive leadership in speeding the broad availability of number portability. A thousand different reasons will be offered by the LECs for delaying implementation of not only a permanent number portability solution, but of interim number portability measures as well. Interim solutions, albeit flawed, should be deployed as soon as practicable. With respect to a permanent architecture, the Commission should adopt the September 1, 1997 deadline proposed by MCI[13] and hold the industry's collective feet to the fire in the same manner it did in achieving the expeditious deployment of the "800" database and with it the prompt availability of "800" number portability.

B. The LEC Commenters Misread the '96 Act's Cost Recovery Provisions

The LEC commenters, occasionally joined by certain competitive local exchange carriers ("CLECs"), offer of variety of misinterpretations of the '96 Act's requirement that "[t]he cost of establishing . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[14] Among other things, the LEC commenters suggest that (i) the Commission should leave the issue of the recovery of the costs associated with the provision of interim number portability to the States;[15] (ii) the cost burden of upgrading incumbent LEC networks should be borne by new market entrants;[16] and (iii) costs

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[13] MCI Comments at 6.

[14] 47 U.S.C. § 251(f)(2).

[15] *See, e.g.,* Ameritech Comments at 6-7; BellSouth Comments 5-6.

[16] *See, e.g.,* GTE Comments at 4;

associated with implementing local number portability should be allocated to carriers not engaged in providing local exchange/exchange access services.[17] TRA once again disagrees.

First, the '96 Act does not require that any and all costs arguably associated with the advent of number portability must be totalled and allocated among incumbent LECs and CLECs. Implementation of number portability will generate two types of costs -- *i.e.,* costs associated with establishing, maintaining and administering databases and other common facilities, on the one hand, and costs associated with upgrading individual carriers' networks and systems, on the other hand. The '96 Act clearly requires that the latter group of costs must be apportioned among the various providers of local exchange/exchange access service. TRA agrees with the CLEC commenters, however, that the competitive neutrality requirement dictates that each carrier must bear the costs associated with any upgrades to its own network.[18] Certainly, competitive neutrality would not be achieved by requiring new market entrants to make substantial investments in incumbent LEC networks.

The LEC (and certain CLEC) commenters also misconstrue Section 251(e)(2)'s requirement that the costs of establishing number portability should be borne by all telecommunications carriers. Applying an overly broad reading of this provision, these parties assert that costs associated with implementing number portability must be allocated beyond LECs and CLECs to any and all providers of telecommunications services. In so contending, these entities simply ignore the qualifying phrase "on a competitively neutral basis." Read as a whole Section 251(e)(2) clearly contemplates a competitively fair distribution of the common costs

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[17] *See, e.g.,* MFS Comments at 5-7.

[18] MFS Comments at 4-5.

associated with the implementation of number portability among those engaged in the provision of local exchange/exchange access services, not a general levy on all telecommunications providers.

If the Commission were to leave to the States oversight of the recovery of costs associated with the implementation and operation of interim number portability measures, as a number of LEC commenters have suggested, it would, in TRA's view, be abdicating its responsibilities under the '96 Act. As discussed above, the '96 Act clearly views local number portability as one of a number of critical linchpins to a competitive local exchange/exchange access market. The '96 Act has delegated to the Commission the responsibility of not only ensuring that local number portability is made promptly and widely available, but that it is structured in such a way as to achieve the pro-competitive aims of the Act. Strategic manipulation of associated costing and pricing could well render number portability useless as a competitive tool. And even though interim measures will be relatively short-lived, it is incumbent upon the Commission to ensure that they are as effective as possible during this interim period.

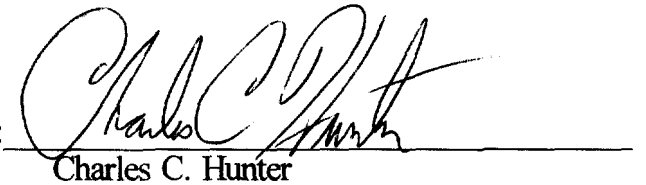
III.

Conclusion

By reason of the foregoing, the Telecommunications Resellers Association, continues to urge the Commission to adopt a uniform national number portability regime utilizing LRN as the permanent architecture, with the intent of facilitating the prompt and ubiquitous availability of service provider number portability nationwide.

Respectfully submitted,

TELECOMMUNICATIONS RESELLERS ASSOCIATION

By: 

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